

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

96 WYTHE ACQUISITION LLC,

Debtor.

Chapter 11

Case No. 21-22108 (RDD)

**STIPULATION AND AGREED ORDER
ESTABLISHING PROCEDURES FOR SUBMISSION
OF BRIEFS AND DOCUMENTATION IN CONNECTION WITH
RESOLUTION OF PRIVILEGE DISPUTE**

96 Wythe Acquisition, LLC (the “**Debtor**”), and Eric M. Huebscher, the Court-appointed examiner in the above-captioned case (the “**Examiner**”) (the Debtor and the Examiner are referred to collectively as the “**Parties**”), by and through their respective undersigned counsel, enter into this stipulation and agreed order establishing the following procedures for the submission of briefs and documentation in connection with the resolution of their pending privilege dispute (this “**Stipulation and Agreed Order**”):

RECITALS

A. On February 23, 2021 (the “**Petition Date**”), the Debtor filed a voluntary petition under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York (the “**Court**”). The Debtor continues to operate its business and manage its property as debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

B. On November 8, 2021, the Court entered the *Order Directing Appointment of an Examiner Pursuant to 11 U.S.C. § 1104(c)* [ECF # 178], which order was subsequently amended by the *Amended Order Directing Appointment of an Examiner Pursuant to 11 U.S.C. § 1104(c)* [ECF # 193] (the “**Amended Examiner Appointment Order**”) and the *Second Amended Order*

Directing Appointment of an Examiner Pursuant to 11 U.S.C. § 1104(c) [ECF # 224] (the “**Second Amended Examiner Appointment Order**”).

C. On November 16, 2021, the Court entered the *Order Approving Appointment of Examiner* [ECF # 186] (the “**Huebscher Appointment Order**”), appointing Eric M. Huebscher as the Examiner in the above-captioned chapter 11 case.

D. On January 24, 2022, the Court so-ordered a stipulation and agreed order by and between Debtor, the Examiner, and Benefit Street Partners Realty Operating Partnership, L.P., which among other things, extended the Examiner’s deadline to file his report through and including February 11, 2022, subject to further extensions for cause shown. [ECF # 339]

E. On January 20, 2022, the Examiner received a document (the “**Document**”) from Ms. Bonnie Pollack, counsel to the Chief Restructuring Officer, responsive to the Examiner’s pending document requests. This Document was included as part of a larger production of documents and accompanied by a cover transmittal asserting that this production is subject, in whole or in part, to the Debtor’s attorney client privilege.

F. On Friday, January 21, 2022, Examiner’s counsel sent a letter to Debtor’s counsel taking the position that the Document is not privileged, and requesting a statement of position from Debtor’s counsel on this issue.

G. On January 24, 2022, counsel to the Debtor sent a reply to counsel to the Examiner, disagreeing with the Examiner’s position and asserting a claim of privilege with respect to the Document.

H. On January 24, 2022, counsel to the Examiner sent a letter to the Court [ECF # 340] seeking guidance as to the process for submission of the Document to the Court for the purpose of determining (i) whether the Document is privileged and (ii) the extent to which the Examiner may

cite to, file or otherwise use the Document in proceedings before the Court.

I. On January 27, 2022, the Court instructed the Parties to file pleadings (the “**Pleadings**”) briefing the question of whether the Document is subject to attorney-client privilege.

J. The Parties have agreed to (i) a schedule for the submission of the Pleadings, and (ii) procedures for filing the Pleadings under seal, and submitting the Document for *in camera* review.

K. Pending the Court’s resolution of this privilege dispute, there is good and sufficient cause for the Pleadings to be filed under seal, and for the Document to be received *in camera*.

NOW THEREFORE, based upon the foregoing recitals, which are incorporated as though fully set forth herein, it is hereby stipulated and agreed, and upon Court approval it shall be ordered, as follows:

1. This Stipulation and Agreed Order shall be binding upon the Parties and effective as of the date of execution.

2. The Parties shall file the Pleadings under seal, without the need for filing of any additional motion to seal.

3. The Parties shall file their respective opening Pleadings on Wednesday, February 2, 2022.

4. The Parties shall file their respective replies, if any, on Wednesday, February 9, 2022.

5. The Examiner is authorized to submit the Document to the Court for *in camera* review contemporaneously with the filing of its opening Pleading. The Document will be received by the Court *in camera*, and will not be filed on the docket of this case.

6. Further hearing on this matter, if required by the Court, will be set by separate Court order.

7. The Parties' agreement to enter into this Stipulation and Agreed Order is made without prejudice to all rights of each Party, which are expressly reserved.

8. This Stipulation and Agreed Order may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

9. The Court shall have sole and exclusive jurisdiction to hear disputes arising out of or related to this Stipulation and Agreed Order.

10. The Parties consent to the entry of an order approving this Stipulation and Agreed Order.

Dated: January __, 2022
White Plains, New York

HONORABLE ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE

STIPULATED AND AGREED TO THIS 29TH DAY OF JANUARY, 2022:

/s/ Stephanie Wickouski

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